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10.357.01

August 27, 2009

BY FACSIMILE, EMAIL AND U.S. POST

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Christopher Calfee, Special Counsel
Attn: CEQA Guidelines
California Resources Agency
1017 L Street, #2223
Sacramento, CA 95814

**Re: Comments of NCRA on OPR's Proposed Amendments to the CEQA
Guidelines to Address Greenhouse Gas Emissions**

Dear Mr. Calfee:

On behalf of the North Coast Rivers Alliance, a conservation organization engaged in public education and advocacy to protect California's north coast rivers and their watersheds from environmentally harmful development, resource extraction and land use management, we offer the following comments on the Office of Planning and Research's (OPR's) Proposed CEQA Guideline Amendments for Greenhouse Gas Emissions.

1. Introduction

CEQA is one of the primary tools by which the public and government agencies can ensure environmental protection. Climate change is indisputably a major environmental factor in all land and water use planning and development. However, in 1970 when CEQA was enacted, little was known about global warming. Consequently, CEQA and its subsequently adopted Guidelines did not specifically address climate change issues. Although CEQA's broad language clearly encompasses climate change as an environmental factor which must be considered in agency environmental reviews, to avoid continuing confusion and debate on this issue, we agree that the CEQA Guidelines should be amended to clearly require public agencies to fully and adequately address and mitigate the impacts on climate change of projects they approve.

Climate change is the most serious threat we face today. Excessive greenhouse gas (GHG) emissions have led to a host of widespread problems, including increasing temperatures, more severe storms and droughts, rising sea levels, and glacial melting. Scientists predict that impacts from our changing climate will lead to increases in diseases such as malaria and hantavirus, shifts in agricultural production that could lead to famines and massive population shifts, decreased water quality and availability, loss of species habitat and resulting species extinction, and coastal erosion and loss of coastal and island land, to name but a few problems

associated with climate change.¹

There is no longer any debate as to whether climate change is human induced; the scientific community and international experts such as the Intergovernmental Panel on Climate Change agree that climate change is directly caused by the excessive GHG levels humans emit into the atmosphere. The United States and China are the leading emitters of GHGs. California, with its large population, excessive traffic, and large agricultural and industrial sectors, contributes heavily to this country's high emission rates.

OPR therefore has a particularly pressing duty to amend and adopt CEQA regulations in order to afford the fullest possible protection for the environment. OPR should adopt the recommendations discussed below when amending the CEQA Guidelines.

2. The Definition of Greenhouse Gases Should Be as Precise as Possible.

The currently proposed definition of GHG states that greenhouse gas includes, but is not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Proposed Guidelines § 15364.5. For the sake of avoiding any confusion and insuring that all GHG emissions are considered by a lead agency, the list of examples of GHGs should be expanded to expressly enumerate *all* GHGs currently known (e.g., carbon black, carbon tetrafluoride, hexafluoroethane, perfluoroethane, sulfur fluoride, trifluoromethane, tetrafluoroethane, difluoroethane, trichlorofluoromethane, dichlorodifluoromethane, chlorotrifluoromethane, trichlorotrifluoromethane, dichlorotetrafluoroethane, chloropentafluoroethane, carbon tetrachloride, tetrachloromethane 1,1,1-trichloroethane, methyl chloroform, 1,1-dichloro-1-fluoroethane, 1-chloro-1,1-difluoroethane, halon-1211, bromochlorodifluoromethane, halon-1301 bromotrifluoromethane).

3. Requirements for Determining Significance Should Be Strengthened.

The proposed guidelines for determining the significance of impacts from GHG emissions are overly vague and impose few, if any, actual requirements on agencies. § 15064.4.

Proposed section 15064.4(b) states that a lead agency "may" consider a project's increased GHG emissions as compared to the existing environmental setting, "may" consider whether the project exceeds a threshold of significance related to GHG emissions, and "may" consider the extent to which the project complies with regulations, local plans, etc., regarding

¹See IPCC Fourth Assessment Report (AR4), Climate Change 2007: Impacts, Adaptation and Vulnerability, available at http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_wg2_report_impacts_adaptation_and_vulnerability.htm

GHG emissions. There is no good reason why these requirements should not be entirely mandatory, especially since they are mandatory elsewhere in CEQA. Particularly given the gravity of impacts from climate change, agencies should be required to consider these factors in every instance where GHGs may be emitted or induced, directly or indirectly, by a project.

The proposed rules also afford agencies too much discretion in determining their own methodology to quantify GHG emissions. The majority of lead agencies are not experts on GHG emissions, and thus should not be in charge of formulating their own methodologies. Instead, OPR should propose a specific methodology that affords the fullest protection for the environment. Not only will this help reduce GHGs, but will also help to ensure greater uniformity throughout environmental review documents.

4. The Proposed Guidelines Should Identify a Specific Threshold.

The proposed addition to section 15064.7 states that when adopting thresholds of significance, a lead agency may consider thresholds previously adopted or recommended by other public agencies or experts, as long as their chosen threshold is supported by substantial evidence. § 15064.7(c). This affords the agency far too much discretion in selecting a threshold, and countenances the possibility that agencies will develop a threshold that is nothing more than a post-hoc rationalization for the level of GHGs that will be emitted by the project.

Agencies are often not experts in the field they are analyzing, and as such, are not qualified to formulate their own thresholds. The proposed Guidelines should instead be amended to require an agency to choose the most stringent measurable threshold supported by science that comports with AB-32 and SB-97.

Similarly, proposed rule section 15064.4 states that an agency may select a threshold "that the lead agency determines applies to the project." § 15064.4(b)(2). Again this affords an agency far too much discretion in choosing a threshold. The proposed Guidelines should either set forth a specific threshold, or require an agency to choose the most stringent threshold available.

In failing to propose a specific threshold, OPR has missed a prime opportunity to impose a requirement on agencies that would materially benefit the environment. Absent such guidance, agencies will be far more likely to continue with a "business as usual" approach, ignoring the significant cumulative effects of projects that unnecessarily emit GHGs. Further, the absence of a specific threshold is contrary to AB-32 and SB-97, which *require* reductions in GHGs. Thus, it is only logical that AB-32 and SB-97 should act as a threshold for all projects and all agencies, and should be incorporated as such into the Guidelines.

5. The Proposed Guidelines Should Strengthen Requirements for Mandatory Findings of Significance.

The Guideline section governing mandatory findings of significance (§ 15065) has not been updated at all to apply to GHGs. Especially given AB-32 and SB-97, which mandate reductions in GHG emissions, *any* increase in and/or new sources of GHG emissions should mandate a finding of significance.

Current requirements for a mandatory finding of significance track closely to the impacts from climate change. For instance, section 15065 requires a finding of significance when a project has the potential to substantially degrade the quality of the environment, reduce habitat and eliminate species, eliminate historical sites, have cumulatively considerable impacts, and have substantial adverse impacts on human beings. Climate change directly contributes to these problems, and as such, any increase in GHGs should require a finding of significance.

6. Greenhouse Gas Emissions Should Be Considered in a Statement of Overriding Considerations.

Similarly, lacking a required mandatory finding of significance for GHG emissions and an actual significance threshold, agencies can easily avoid their duty to adopt mitigations or alternatives to reduce such emissions, or to prepare a statement of overriding considerations where such emissions are unavoidable. Given both the gravity of climate change and California legislative initiatives requiring GHG reductions, any unavoidable increase in GHG emissions should trigger preparation of a statement of overriding considerations.

The Guideline section pertaining to statements of overriding considerations has no proposed amendments regarding GHG emissions. In fact, a proposed overly vague and ambiguous amendment has been added that weakens the statement of overriding considerations requirements. The proposed amendment states that “[w]hen an agency makes a statement of overriding considerations, the agency may consider adverse environmental effects in the context of region-wide or statewide environmental benefits.” § 15093(d). This allows agencies to downplay adverse environmental effects when they can point to environmental benefits. For instance, a recycling plant may emit GHGs but also benefit the environment through recycling. Section 15093 already has such a balancing test that allows an agency to weigh adverse impacts with a project’s benefits. *See* § 15093(a).

7. Requirements for the Environmental Setting Should Reflect Current Climate Change Concerns.

CEQA Guideline section 15125 on Environmental Setting should be amended to require more specific information on GHGs. Currently, it is common for agencies to compare a project’s GHG emissions to California’s overall emissions. This is contrary to CEQA’s requirement of

comparing the project's emissions with "the physical environmental conditions in the vicinity of the project." § 15125(a).

Agencies are also able to rely on existing facilities that emit high levels of GHG emissions. Often, these older facilities have been "grandfathered" in, never actually undergoing CEQA review because they were built before CEQA became law. Agencies should not be allowed to rely on these old facilities in concluding that a project does not have a significant impact merely because it will have fewer emissions than an existing, outdated facility.

Section 15125 has been amended to require agencies to discuss inconsistencies with general, specific, or regional plans, including "greenhouse gas reduction plans." § 15125(d). This section should also expressly require an agency to discuss inconsistencies with AB-32 and SB-97.

8. The Proposed Guidelines Should Strengthen Requirements for the Consideration and Discussion of Significance.

Section 15126.2(c) addresses significant irreversible environmental changes. This section should be revised to include a specific reference to GHG emissions, as changes to our climate caused by GHGs are often irreversible.

Section 15126.2(d) discusses growth-inducing impacts. Growth inducing impacts are inherently linked to climate change issues. For instance, population growth in an area leads to an increase in traffic that emits GHGs. This section should be amended to specifically require consideration of a project's growth-inducing impacts on climate change. As well, this section states that "[I]t must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment." This section allows agencies to argue that growth-inducement may in fact be beneficial to the environment. Considering the causal connection between growth-inducing impacts and climate change, growth-inducement should always be considered detrimental to the environment. CEQA should reflect a preference for in-fill in urban areas rather than sprawl into previously un-developed areas, which in turn will decrease GHG emissions throughout the State.

9. The Proposed Guidelines Should Provide Mandatory Mitigation Measures for GHG Emissions.

Current mitigation measures and proposed amendments are inadequate to effectively mitigate, let alone, prevent, GHG emissions.

Proposed amendments to Section 15126.4(c) list proposed mitigation related to GHG emissions. This section lists only suggested mitigation measures, but does not *require* agencies to implement the specific mitigation measures listed. Voluntary mitigation includes establishing

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measures in an existing plan or program for reduction of emissions and reducing emissions through project design. It is hard to imagine a project that could not incorporate these broad mitigation measures. There is no good reason why the voluntary nature of these measures cannot be entirely eliminated and replaced with binding requirements that agencies *must always* implement these mitigation measures.

Appendix F of the CEQA Guidelines lists specific mitigation measures that project proponents "may" include as part of a project. It is difficult to imagine any specific project where mitigation measures such as reducing energy consumption, siting and designing to minimize energy consumption, reducing peak energy demand, and recycling, would not be entirely appropriate. The Guidelines should *require* these already minimal mitigation measures for *every* project.

Further, the Guidelines should be a technology-forcing regulation. Agencies should always be encouraged to use the latest available, environmental beneficial, technology when constructing and operating a new facility. As such, the Guidelines should *require* at least some use of renewable energy sources as a mandatory mitigation measure.

10. The Proposed Guidelines Should Strengthen Cumulative Impact Requirements for Climate Change Analysis.

The unique nature of climate change makes consideration of the issue especially appropriate for cumulative impacts analysis. Climate change is obviously the cumulative result of all GHG emissions. As such, any increased level of GHG emissions should be considered cumulatively significant.

Section 15130, addressing cumulative impacts analysis, has only one proposed amendment addressing climate change: that an EIR shall analyze GHG emissions resulting from a proposed project when the incremental impacts of those emissions may be cumulatively considerable. § 15130(f). There is much more OPR could do to insure that a proper cumulative impacts analysis occurs.

First, section 15130(b) states that "[t]he discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided" for the project's individual impacts. This section should note that impacts from climate change are inherently severe in order to prevent agencies from downplaying impacts from climate change. The phrase "likelihood of occurrence" is misleading for a climate change analysis, as there is no longer any debate as to whether climate change is occurring. Additionally, given the particular nature of climate change, the cumulative impacts discussion should be as detailed, if not more so, as the climate change analysis provided for the individual project.

Second, section 15130(b)(B)(3) provides that agencies should “define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.” This is problematic in terms of climate change analysis because while climate change does have localized impacts (which an agency should of course be required to discuss and consider), it also has global repercussions. For instance, GHG emissions in California cumulatively cause ice-sheet melting in Antarctic or crop failure in Africa. We do not mean to suggest that every impact in every part of the world should be analyzed in detail in an EIR. However, in order to fulfill CEQA’s purpose of providing the public with an information document, an EIR should at least provide some overview of the significant impacts associated with climate change, including impacts such as glacial melting, ocean acidification, species and habitat loss, loss of historical sites, and the possible loss of entire islands.

Proposed section 15130(e) is directly adverse to the goal of mitigating and reducing GHG emissions. This section provides that if cumulative impacts regarding climate change are addressed in a prior EIR for a general plan or similar document, “then an EIR for such a project should not further analyze that cumulative impact.” A project may occur years after the adoption of a general plan. New information regarding climate change, and new technology to reduce GHG emissions, will likely have been developed in the meantime. Each individual project should thus address GHG emissions and provide specific mitigation measures.

11. The Proposed Guidelines Should Limit the Applicability of Tiering with Regard to Climate Change.

The proposed additions to the CEQA Guidelines regarding tiering and streamlining of GHG emissions are problematic. They allow an agency to tier and/or incorporate by reference earlier programmatic documents without conducting an independent analysis. *See* § 15183.5(a). As stated earlier, new information and/or technology may have been established after the development of the original programmatic document. It is therefore appropriate for an agency to conduct its own independent review of GHG emissions and the resulting impacts for each new project.

Also troubling, this section provides that “a lead agency may determine that a project’s incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in a previously adopted plan or mitigation program under specified circumstances.” § 15183.5(b). Again, agencies should be required to conduct their own independent review of GHG emissions and related impacts. Agencies should not be allowed to fall back on a planning document that may be flawed or outdated.

The proposed guidelines also allow an agency to defer analysis and mitigation measures in a “greenhouse gas reduction plan or similar document.” § 15183.5(b). Not only is the overly vague, but CEQA already affords agencies far too much discretion in deferring environmental review. Given the severity of climate change and the need for quick action, analysis and mitigation should

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not be deferred until some future time. Agencies should be required to provide a full analysis in the actual EIR itself, as well as specific and binding mitigation measures.

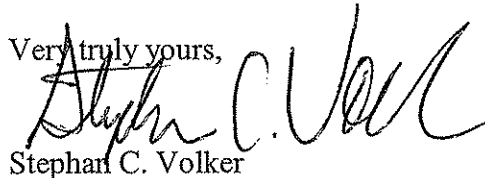
This section also provides that a GHG reduction plan may establish a level below which the contribution to GHG emissions would not be cumulatively considerable. § 15183.5(b)(1)(B). This affords an agency too much discretion in arbitrarily choosing a level which includes all estimated GHG emissions for a project. As previously discussed, any increase in GHG emissions should be considered cumulatively significant. This proposed guideline allows agencies to curtail their duty to actually analyze cumulative impacts.

12. Conclusion

Climate change is the most severe and dire issue facing the world today. OPR has missed a prime opportunity to address climate change before it is too late. The proposed guidelines should be amended to impose more specific and meaningful requirements on agencies, and to afford the environment the highest level of protection, as CEQA requires.

Thank you for considering our comments on this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephan C. Volker", written over the typed name.

Stephan C. Volker
Attorney for North Coast Rivers Alliance

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